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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1973
NO. 73-159

RALPH GRIFFIN and ROBERT E. KEELE, on behalf of themselves and all others similarly situated,

Petitioners,

vs.

PACIFIC MARITIME ASSOCIATION and LOCAL 13, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, an unincorporated association,

Respondents.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

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Respondent LOCAL 13, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION prays that the Petition for a Writ of Certiorari be denied.

STATUTES INVOLVED

The law in effect at the time of this suit, Title VII of the Civil Rights Act of 1964, Section 706, 42 U.S.C., Section 2000e-5(d) (1970 Ed.), provides in pertinent part:

> "A charge (of discrimination based upon race) under subsection (a) of this section shall be filed within ninety days after the alleged unlawful employment practice occurred, except that in the case of an unlawful employment practice with respect to which the person aggrieved has followed the procedure set out in subsection (b)

> of this section (by application to State or local authorities), such charge shall be filed by the person aggrieved within two hundred and ten days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency."

The "equal rights" provision, Section 16 of the Civil Rights Act of 1870, 42 U.S.C. 1981, provides in pertinent part:

> "All persons within the jurisdiction of the United States shall have the same right... to make and enforce contracts...and to the full and equal benefit of all laws and pro-

> ceedings for the security of...property ... ." (1972 Ed.)

The laws applicable to proceedings brought under 42 U.S.C. Section 1981 are set forth in 42 U.S.C. Section 1988 (1970) which provides as follows:

> "...(I)n all cases where...(the laws of the United States) are not adapted to the object (of vindicating the civil rights of all persons), or are deficient in the provisions necessary to furnish suitable remedies...the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil...cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause ... ."

CONCISE STATEMENT OF THE CASE

A. PROCEEDINGS BELOW

On September 13, 1971, Petitioners filed suit in the United States District Court for the Central District of California requesting injunctive relief and damages. Petitioners alleged that the Respondents had engaged in a conspiracy since 1945 to deprive Petitioners of certain collective bargaining rights because of their race and requested an injunction and damages for fringe benefits lost because of an allegedly discriminatory discharge in 1946 and for punitive damages. Respondents PACIFIC MARITIME ASSOCIATION (hereinafter "PMA") and INTERNATIONAL LONGSHOREMEN'S AND

WAREHOUSEMEN'S UNION, LOCAL 13 (hereinafter "LOCAL 13") moved for summary judgment. The District Court heard the motion on March 27, 1972, and granted it, finding in favor of Respondents on all points raised (R. 120 et. seq.).

Petitioners appealed to the Ninth Circuit and after argument the Court ruled in favor of Respondents on the basis that the action was barred both by the passage of time and the Petitioners' failure to exhaust their remedies under 42 U.S.C. Section 2000e-5(d) (1970 Ed.).

B. FACTUAL BACKGROUND

In 1946 Petitioners, as part of a group of about 500 men, were laid off because of their low seniority and

because of lack of work opportunities at that time. Of those 500, over half were white. By 1951 most of these men were again offered work.

Petitioners claim that the layoff was racially motivated and that they, along with those they represent, ought to be receiving credit for the period 1946 to 1948-51 (which they did not work) for vacation and pension purposes. No party contends that benefits based upon periods subsequent to reregistration have been denied. Furthermore, two prior attempts alleging the same discrimination were denied as being too late. Both a 1948-1952 law suit in State Court, Ralph Griffin, et al vs. ILWU, Local 1-13, etc., et al, 109 Cal. App.2d 823; 241 Pac.2d 552 (1952), and a grievance arbitration proceeding resulted in judgments and

awards against Plaintiffs on that ground.

ARGUMENT

It is impossible to comprehend the grounds upon which Petitioners request certiorari before this Court. They have shown no conflict of the decision below with either prior decisions of this Court or with the decisions of the other Circuits. They do not intimate that the decisions of the Federal Courts below are in conflict with the applicable laws of the State of California. Nor do they proffer that there exists an important question of Federal law which is now undecided, but that should be decided by this Court. Finally, they do not claim that the Court of Appeal has departed

from or has sanctioned the departure from the accepted and usual course of judicial proceedings. Petitioners apparent contentions will be answered below.

A. THERE IS NO CONSTITUTIONAL QUESTION

Petitioners in this action brought suit under Title VII of the Civil Rights Act of 1964, 42 U.S.C. Sections 2000e1-15 and under 42 U.S.C. Section 1981. Petitioners contend that it would be a denial of Fourteenth Amendment rights for a Federal Court to apply a State period of limitations in the vindication of federally protected rights guaranteed by 42 U.S.C. 1981 (1971 Ed.).

Although Section 1981 is not subject to an expressed period of limitation,

it is well settled that the State statute of limitation for the most closely analogous cause of action will apply.

There are few occasions when a Federal Court sitting in a Federal question case for which no applicable Federal statute of limitations exists will create a period of limitations as a matter of Federal common law. One such case was Holmberg v. Armbrecht, 327 U.S. 392; 66 S. Ct. 582 (1946).

In Holmberg, the Court dealt with a federally created right for which the sole remedy was in equity. In its decision that State statutes of limitation should not apply to such equitable rights and remedies, the Court relied upon Russell v. Todd, 309 U.S. 280; 60 S. Ct. 527 (1940). It should be noted that Russell stressed two things: first,

the importance of the Rules of Decision Act which at that time applied only to trials at common law 28 U.S.C. 725 (1940), and second, that where the jurisdiction of a Federal Court in equity was concurrent with that of law brought in aid of a legal right equity will withhold its remedy if the legal right is barred by the local statute of limitations. This is still the law. Cope v. Anderson, 331 U.S. 461; 67 S. Ct. 1340 (1947); International Union, UAW v. Hoosier Cardinal Corp., 383 U.S. 696; 86 S. Ct. 1107 (1966).

It should be noted that the Rules of Decision Act was revised and clarified in the light of the Federal Rules of Civil Procedure, 28 U.S.C. 1652 (1972 Ed.). It now applies to all civil actions, including those which would have been brought in equity prior to the inception

of the Federal Rules of Civil Procedure.

Assuming, however, that Holmberg might still be applicable, it stands for the proposition that where fraud exists and the Plaintiff, with due care and diligence and without fault, cannot discover the fraud, his rights will not be extinguished. However, if it can be shown that his lack of diligence was wholly unexcused and both the nature of the claim and the situation of the parties was to call for diligence, a Federal Court in equity will dismiss the suit. Holmberg v. Armbrecht, supra.

In the present case, Petitioners suffered substantial injuries in 1946 by being deregistered, they waited until 1948 to sue the first time and over 20 years to commence action again. They have no excuse for so sleeping on their

injuries.

In contrast to Holmberg, claims arising under 42 U.S.C. Section 1981 clearly contemplates the application of State law where the laws of the United States have not spoken to the matter in question. 42 U.S.C. 1988 (1972 Ed.). The validity of the decision to apply the most nearly analogous State statute of limitations is correct by reason of not only 42 U.S.C. 1988, but also 28 U.S.C. Section 1652 and the numerous decisions of this Court. O'Sullivan v. Felix, 233 U.S. 318; 34 S. Ct. 597 (1914); International Union, UAW v. Hoosier Cardinal Corp., 383 U.S. 696; 86 S. Ct. 1107 (1966); Chevron Oil Co. v. Huson, —U.S.—; 92 S. Ct. 349 (1971).

It is absurd to argue in the light of this well settled law that

application of the California Statute of Limitations, California Code of Civil Procedure, Sections 337, 338(1) (West 1972 Supp.) and 343 (West 1954), is constitutionally infirm.

Furthermore, it cannot be shown that there was any denial of due process of the law or of the equal protection of the laws by any State action. In fact, a statute of limitations is designed to protect against cases such as the present case where there is an attempt to litigate (in the present case, to relitigate) situations occurring in the distant past. In fact, the statute in question is racially neutral, both on its face and in its application.

Petitioners' first contention is without merit.

B. THERE IS NO CONFLICT WITH DECISIONS OF THIS COURT OR AMONG THE CIRCUITS

Although there is division among the Circuits regarding the contention that one need not file charges with either the Equal Employment Opportunity Commission or the relevant State agency prior to filing suit under 42 U.S.C. Section 1981 (compare, for example, Waters v. Wisconsin Steel Works, 427 F.2d 476 (7th Cir. 1970), International Harvester Co. v. Waters, 400 U.S. 911; 91 S. Ct. 137 (1970) and Sanders v. Dobbs Houses, Inc., 431 F.2d 1097 (5th Cir. 1970)), no Circuit Court has allowed a claimant to refrain from filing a complaint with the EEOC, as is required by 42 U.S.C. Section 2000e-5(d), and then

file suit under that Section in the Courts.

If Petitioners claim that the only actual discrimination occurred in 1946, then it is clear that suit under the Civil Rights Act of 1964 is frivolous, since its effective date was not until some years later. If Petitioners contend that the discrimination occurred at some later date, then in order to gain the jurisdiction of the Court to hear suit brought under Title VII of the Civil Rights Act of 1964, Petitioners must comply with provisions of the Civil Rights Act of 1964.

There are no cases of this Court or any of the Circuits which conflict regarding the necessity of filing of such a complaint as a prerequisite to such a suit. In Petitioners sole authority,

Love v. Pullman, 404 U.S. 522; 92 S. Ct. 616 (1972), Plaintiffs therein had filed a complaint with the EEOC.

C. NO IMPORTANT ISSUE OF LAW EXISTS WHICH HAS NOT BEEN SETTLED

Petitioners seem to contend that a wrong perpetrated in 1946 has given rise to a cause of action in 1969.

Clearly if a cause of action exists, it exists when a party knew or should have known that a wrong had been committed. (See Holmberg v. Armbrecht, supra.) So if Petitioners' deregistration in 1946 was unlawful and Petitioners, through due diligence, knew they had been wronged, then a right to sue would have accrued at that time. In fact, Petitioners recognized the 1946 layoff as the

basic act of which they complained. Petitioners do not and have not contended Respondents concealed from them the injury they then received.

After the deregistration there were other adverse effects that resulted from the 1946 to 1948-51 period of unemployment; for example, in 1954 when 12 years of seniority was required to obtain a third week of vacation and in 1958 when this was reduced to 10 years of service. The injuries involved from not having worked clearly became known or should have become known by Petitioners in 1958.

To claim that the extent of injuries was greater than may have been originally contemplated does not give rise to a new cause of action at the time the extent of the injuries became apparent.

Since the purpose of statutes of limitation are designed to prevent the litigation of occurrences which have grown old, the litigation here should be barred. To cause the litigation of the central issue of this case, whether the 1946 deregistration or any of the other supposed acts which Petitioners knew or should have known about, is inconsistent with the purpose of such statutes of limitation.

PRAYER

For the reasons set forth herein, LOCAL 13, INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION respectfully requests this Court to deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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